The Obligation of Adhering to a Single Madhhab in all its Rulings

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The prevalent Deobandī and Subcontinent position on the obligation of adhering to one school of jurisprudence (madhhab) in all its juristic rulings (*masā'il*) has recently come under increasing scrutiny. We will argue in this paper that this position is not only more sound in our context, but is also supported by **strong positions** from within each of the four madhhabs and the **stronger position** of the Hanafī madhhab, with some of the early scholars having **quoted consensus**.

As the discussion is relatively lengthy, readers who wish to avoid the details may skip the technical discussion and read the brief summary presented at the end.

The view that we will support can be summarised in the following points:

1. It is necessary for laypeople and scholars who are not mujtahids to make taqlīd of mujtahids.[1] Moreover, following from the third century of Hijrah, the number of mujtahids of all degrees became very few and far between.[2] Hence, the vast majority of people from that era onwards fall into this category.

2. After the codification of the madhhabs in approximately the fourth century of Hijrah, it was necessary for laypeople to adhere to a single madhhab in all its rulings. There are two principle reasons for this:

    a. If a layperson was given the option to adopt any position he likes from the various madhhabs, it would lead to freeing him from religious obligation (*taklīf*), which forms the very foundation of a Muslim's relationship to the Sharī'ah. The reason for this is that the codified madhhabs generally address all small and major issues. On any particular issue, therefore, a muqallid would be exposed to multiple differing viewpoints. Hence, if given the option to choose between them, he will be at liberty to select an opinion based on his desires. He may even consider something harām at one point and halāl at another. In other words, dīn becomes a thing of play, and religious obligation (*taklīf*) becomes bereft of any meaning. This

[1] "Non-mujtahids" in this context refers to those who have not reached the level of "ijtihād" in all its forms, whether absolute ijtihād or restricted ijtihād, though they may be learned scholars. Tāj al-Dīn 'Abd al-Wahhāb al-Subkī (727 – 771 H) said: "Taqlīd is to adopt a view without [detailed] knowledge of its evidence, and it is binding on the non-mujtahid." (*Jam' al-Jawāmi'*, Dār al-Kutub al-'Ilmiyyah, p. 121) Al-Sayf Al-Āmidī (551 – 631 H) said: "It is binding on the layperson and the one who does not have the qualification of ijtihād – even though he has acquired some sciences that are taken into consideration for ijtihād – to follow the view of the mujtahids and to accept their fatwas according to the verifiers from the Usūlīs." (*Al-Ihkām fī Usūl al-Ahkām*, Dār al-Samī'ī, 4:278)

[2] As explicitly stated by Qādī 'Iyād in the passage from him quoted below.

dangerous implication has been expressly mentioned or alluded to by a number of major early authorities, including the early Shāfi'ī mujtahids known as the "Ashāb al-Wujūh," al-Juwaynī (419 – 478 H), al-Ghazālī (450 – 505 H), Ilkiyā al-Harrāsī (450 – 504), al-Arsābandī al-Hanafī (d. 512 H), al-Jīlī (470 – 541 H), al-Māzirī (453 – 536 H) and Ibn al-Munayyir al-Mālikī (620 – 683 H). Their statements or the opinions transmitted from them will be quoted below.

Furthermore, if given the option of selecting any opinion one likes, a person may unknowingly fall into talfīq[3] which is invalid by consensus.[4] Moreover, it may open the door to selecting opinions outside of the established madhhabs, leading to following shādhdh[5] opinions, something that has been strongly condemned by the 'ulamā'.[6] These further implications have been alluded to, in particular, by al-Māzirī. Hence, <u>the obligation of following a single madhhab is a precautionary measure against these negative repercussions</u>.

b. If given the option of following any madhhab one wished on different issues, a major inconsistency will arise in a layperson's juristic methodology. Each Imām and his madhhab has a distinct methodology and distinct points of reference to earlier proto-madhhabs. If a layperson followed different madhhabs on different issues, it would lead to contradictions in the basic principles on which the rulings are based. For example, if someone followed the Hanafī madhhab in one ruling which is based on a particular principle and the Shāfi'ī madhhab on another ruling which is based on a contradictory principle, a contradiction will arise in the legal methodology, even though both issues may apparently seem distinct.[7]

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[3] Literally meaning "to join together", talfīq is to make taqlīd of two or more Imāms in one issue in such a way that the resultant action is regarded as invalid by all the Imāms whose taqlīd was made.

[4] 'Allāmah Qāsim ibn Qutlūbughā (d. 879 H) said: "The ruling produced from talfīq is invalid by the consensus of the Muslims." (*Al-Tashīh wa l-Tarjīh 'alā Mukhtasar al-Qudūrī*, Dār al-Kutub al-'Ilmiyyah, pp. 122-3)

[5] Marginal and fringe opinions which were rejected and condemned by the overwhelming majority of 'ulamā'. Examples include the permissibility of mut'ah marriage, the permissibility of selling one silver coin for two on spot and the permissibility of musical instruments.

[6] It is reported from Imām al-Awzā'ī (d. 157 H) that he said: "The one who selects the rareties of the 'ulamā' exits Islām." (*Usūl al-Iftā' wa Ādābuh*, Makataba Ma'ārif al-Qur'ān, p. 206)

[7] The scholars of Usūl discuss a particular situation known as *'adam al qawl bi 'l-fasl* (the nonexistence of an opinion of distinction). If there are two issues, 'A' and 'B', and a group of scholars took opinion 'X' in both A and B and a second group took opinion 'Y' in both A and B, but there is no scholar who held the opinion of X in one and Y in the other, this is known as "*'adam al qawl bi 'l-fasl*". Now, would it be permissible for a later scholar to adopt an opinion which makes a "distinction"

‘Allāmah Anwar Shāh Kashmīrī explained this point in his *Fayd al-Bārī*. A translation of this passage can be found in the appendix below. Qādī ‘Iyād (476 – 544 H) also mentions this and al-Juwaynī may have alluded to it, as will be discussed below.

It is important to note here that when we speak about the necessity of restricting oneself to a single madhhab, we do not mean the views of only the founder of the madhhab, but the collective input of all the mujtahid scholars of that madhhab. The reason is that the developed madhhab represents the conclusions of one unified pattern or school of juristic thought. The prohibition of taking from multiple mujtahids in the later period, therefore, applies only to inter-madhhab disagreements and not necessarily intra-madhhab divergence. See the statements of Abu l-‘Abbās al-Nātifī (d. 446) and Ibn Hamdān al-Hanbalī (603 – 695 H) quoted below.[8] Furthermore, the ruling under discussion applies to normal circumstances. In exceptional cases, where there is extreme difficulty in acting on the dictates of one madhhab, the ruling may change.

3. In the first few centuries of Islām, before the codification of the major madhhabs, a common person was permitted to adopt the views of different mujtahids on different issues. In this period, non-mujtahids were generally limited in the number of mujtahids they had access to and limited in the resources at their disposal for attaining firm knowledge of the view of a particular mujtahid on a certain issue of jurisprudence. As a result, the laypeople of this time were not able to seek out the opinions of scholars who held the easiest opinions on different issues.[9] In other words, unlike the situation in the later period, a layperson of this time would not generally be aware that there are multiple differing opinions on a

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between the two, i.e. opinion X in one and opinion Y in the other? The answer given by the author of *Usūl al-Shāshī* is that if the ruling given on B by both groups is based on the same principle on which their opinions on A was based, then it is not permissible, as to do so would be to adopt two contradictory principles. (*Usūl al-Shāshī*, Dār al-Gharb al-Islāmī, pp. 213-4)

[8] Imām Ahmad al-Wanshirīsī al-Mālikī (d. 914 H) said: “What is understood from the force of the speech of these imāms – may the pleasure of Allāh be upon them – is that that which is prohibited is seeking out the easiest opinions of all the madhhabs, not a single madhhab. The verification is that there is no [apparent] distinction, but that which they made the reason for the prohibition, in that it will lead to relinquishing [religious] responsibility in every issue that is differed upon, only becomes completely apparent in the first [i.e. seeking out the easiest opinions of all the madhhabs] not the second [i.e. seeking out the easiest opinions within a madhhab]; because a matter is often prohibited in one madhhab by agreement and permissible in another by agreement or disagreement, so if we permitted seeking out dispensations from [all] the madhhabs it will lead to what they said, because what the madhhabs [all] agree upon is few. Seeking out the easiest opinions of one madhhab is not so, as it has fewer negative repercussions than the first.” (*Al-Mi‘yār al-Mu‘rib*, 12:32)

[9] Ibn al-Munayyir al-Mālikī of the seventh century mentioned this point. See his quote below under the section, “The Layperson has no Madhhab”?

particular issue. On the contrary, when he receives a verdict, that may be the first and only opinion he finds on that issue.

Furthermore, a layperson would normally refer to the mujtahids of a particular town, like Makkah, Madīnah or Kūfah.[10] Scholars belonging to a particular town were generally unified in the broad contours of their juristic methodology. As a consequence, a layman would not be subject to a great degree of inconsistency in legal opinions and methodology even if he were to ask multiple mujtahids. The permissibility of adopting the views of multiple mujtahids was, moreover, based on necessity. Laypeople generally lacked access to a single mujtahid or school for verdicts on all issues of jurisprudence. Hence, to restrict them to a single mujtahid would not have been possible. Imām al-Juwaynī and others have made reference to this point. In the present time too, if it is extremely difficult to follow one madhhab due to lack of access to all positions of the school or extreme ignorance, the same rule will apply.

After the codification of madhhabs, it became necessary for a non-mujtahid to adopt one madhhab, and follow it in all its rulings. The layperson in this time in most places of the Muslim world would be exposed to the known opinions of the different madhhabs. Hence, giving legitimacy to adopt the view of any madhhab on any issue would lead to great inconsistency in the juristic methodology of a muqallid. The potential for selecting the easier opinions and playing with dīn became much more real. At this stage, a muqallid was exposed to multiple opinions <u>in single issues</u>, as opposed to the earlier period when the laypeople were generally not exposed to multiple opinions on single issues. Hence, giving him the option to choose between them will free him of religious obligation (*taklīf*), and allow him to select opinions based on his desires. Moreover, a muqallid is only qualified to assess which madhhab he feels is in general superior. He does not have the ability to adjudicate between them in individual issues. Hence, as al-Ghazālī explicitly mentions, and others have suggested, the only reason why a muqallid would follow multiple mujtahids in the later period is in following his desires (*tashahhī*), even if he does not realise it.

4. Finally, it is necessary to have conviction that the madhhab one follows is correct, as stated by Fakhr al-Dīn Muhammad ibn Mahmūd al-Hanafī (d. ca. 570 H) and others. This is achieved by accepting the words of trusted scholars or based on widespread recognition of the madhhab or other such indications, as mentioned in the statement of Imām al-Ghazālī quoted below. The reason for this obligation is that the rules of Sharī'ah depend on one's belief in their veracity. If one is in doubt or does not have conviction that what he is following is correct, the rules of Sharī'ah cannot correctly be implemented.

[10] It is mentioned in *Sahīh al-Bukhārī*, for example, that the people of Madīnah would follow exclusively the verdicts of Zayd ibn Thābit.

According to the scholars of juristic theory, the correct view in a point of ijtihādī difference is in reality only one, although all mujtahids are on a right path and are rewarded for their ijtihād; and they, as well as their followers, will be excused for any error in ijtihād that falls within the parameters of legitimate disagreement. Hence, one must feel confident that the path he has chosen, i.e. his madhhab, is correct in relation to the others, which he believes are incorrect on the points where they differ with his madhhab, while acknowledging the possibility that the reverse may be true.

Statements from the Early Scholars of the Hanafī School

One of the principles of fatwa in the Hanafī school is that, in the absence of a clear ruling from the founders of the madhhab, i.e. Imām Abū Hanīfah and his direct disciples, the fatwa of the early mujtahids in the school[11] is binding[12]. On the issue at hand, the ruling only became applicable after the codification of the madhhabs, when a new situation presented itself to the common Muslims, i.e. access to the conclusions of multiple recognised mujtahids following distinct legal methodologies on most issues of jurisprudence. The early mujtahids of the Hanafī madhhab from this period clearly obligated adherence to a single madhhab in all its rulings. Hence, the views of later scholars of the madhhab like Ibn al-Humām (d. 861 H) and Ibn Nujaym (d. 969) will be disregarded.

The following are some of these statements:

1. Fakhr al-Qudāt Muhammad ibn al-Husayn Abū Bakr Arsabandi (d. 512)[13] said:

   "If the truth was multiple, it would be allowed for a muqallid to make taqlīd of this mujtahid once and taqlīd of another at another time, so this would be premising the religion on desire, which is ugly…And those who say the truth is one, consider it necessary for the layperson to follow one Imām – whose position according to him is that he is the most learned based on the evidence of inspection – and he does not oppose him in anything based on his personal whim." (*Taqwīm Usūl al-Fiqh*, Dār al-Nu'mān lil 'Ulūm, 2:868)[14]

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[11] "Mujtahid imāms" refer to both "mujtahids in the madhhab" (mujtahid fi l-madhhab) who are capable of deriving new rulings based on the principles and precedents from the madhhab, and "mujtahids of fatwa" (mujtahid fi l-futyā) who have the ability to assess the stronger opinions of the madhhab.

[12] Allāmah Ibn 'Ābidīn proves this principle of the madhhab in his *Sharh 'Uqūd Rasm al-Muftī* (Maktabat al-Buhsrā, pp. 52-3), quoting from *al-Hāwī al-Qudsī* and *Fatāwā QādīKhān*.

[13] Kafawī said, "The leadership of the Hanafīs culminated at him." (*al-Fawā'id al-Bahiyyah*, Dār al-Ma'rifah, p. 164-6)

[14] الحق لو كان حقوقا لساغ للمقلد تقليد هذا المجتهد مرة وتقليد الآخر مرة، فكان هذا بناء الدين على الهوى، وهذا قبيح...ومن قال الحق واحد ألزم العامي أن يتبع إماما واحدا وقع عنده بدليل النظر أنه أعلم، ولا يخالفه في شيء بهوى نفسه (تقويم أصول الفقه، دار النعمان للعلوم، ج.٢ ص.٨٦٨)

In this statement, al-Arsābandī is refuting the Muʿtazilī belief that the truth in an issue open to differences of ijtihād is multiple. He says that this would entail the layperson is allowed to follow different mujtahids which would be basing religion on desire (and not on religious obligation). Hence, there is a clear indication in this passage that the reason why one must adhere to a single madhhab is that to do otherwise would entail basing religion on desire. The reason why giving such an option to a muqallid entails basing the religion on desire has been articulated by al-Arsābandī's Shāfiʿī contemporary, Imām al-Ghazālī, in the passage that will be quoted from him further below. In brief, the limit of a muqallid's ijtihād is to determine that one madhhab appears superior to the other. Beyond that, the muqallid does not have the capacity to adjudicate between the madhhabs on individual points of difference. Hence, the only reason he would follow one madhhab in some rulings and another in other rulings is in following his desires (even if he does not realise it or believe so).

Thereafter, al-Arsābandī asserts the scholars who hold that the truth is one – meaning, the scholars whose view we subscribe to – believe that it is necessary for the layperson to follow one Imām. The process by which the layperson selects which Imām he will follow is to apply his mind and choose the one he feels is most learned. The reason he is to do this is precisely because the truth in an issue of disagreement is one. If one did not have confidence that his madhhab is superior, he would not have belief in its injunctions being correct, and in order for the laws of Sharīʿah to properly function, it is necessary that a person believes they are correct.

Hence, al-Arsābandī clearly advocates the obligation of adherence to a single madhhab on the basis that giving the layperson the option to choose from different madhhabs on different occasions entails basing the religion on personal whim.

2. Ahmad ibn Muhammad ibn ʿUmar Abu l-ʿAbbās al-Nātifī (d. 446)[15] said, commenting on a statement of Imām al-Hasan ibn Ziyād (d. 204) regarding the options available to a person "ignorant of knowledge" (*al-jāhil bi l-ʿilm*) when presented with multiple different fatwas:

"This is when the questioner is on the madhhab of the people of ʿIrāq, and one scholar issues fatwa on the view of Abū Hanīfah and another scholar issues fatwa on the view of Abū Yūsuf and another scholar issues fatwa on the view of

[15] He was described as one of the senior ʿIrāqī jurists and authors of *Wāqiʿāt* and *Nawāzil* (*al-Fawāʾid al-Bahiyyah*, p. 36)

Muhammad or the view of Zufar, for he may not opt for the view of al-Shāfiʿī nor the view of Mālik." (*Muʿīn al-Hukkām*, p. 27)[16]

This statement illustrates that in the fourth century, the Hanafī scholars spoke in a context of laypeople (who are "ignorant of knowledge") adhering to a single madhhab. Moreover, such people were not allowed to step outside of the madhhab. It also illustrates "adherence to a madhhab" refers to the madhhab as a whole and not to a single person, i.e. a body of scholars belonging to the same juristic school.

It is important to note here that the view of those scholars who spoke about the layperson having a choice to select from multiple different fatwas presented to him does not contradict this paradigm, precisely because, as al-Nātifī mentioned, a layperson is restricted to follow the scholars of his school and is not necessarily restricted to any particular scholar within the school. Hence, this "choice" refers to the scholars within one's school and not outside of it.

3. Imām Muhammad ibn Mahmūd ibn al-Husayn al-Asrūshanī (d. 632)[17] said:

   "It is permissible for a man and woman to switch from the Shāfiʿī madhhab to the Hanafī madhhab and, likewise, vice versa, but in totality. As far as a single issue is concerned, he will not be allowed [to do that]; such that if blood was to come out from a person of the Hanafī madhhab and it flowed, it will not be permissible for him to pray before performing wudū', imitating the madhhab of al-Shāfiʿī in this issue, and if he prayed before performing wudū', he will be punished."[18]

4. Fakhr al-Dīn Muhammad ibn Mahmūd (d. ca. 570 H)[19] said:

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[16] وقال أبو العباس الناطفي: هذا إذا كان المستفتي على مذهب أهل العراق أفتى عالم بقول أبي حنيفة رحمه الله وأفتى عالم بقول أبي يوسف وأفتى عالم بقول محمد أو بقول زفر، فليس له أن يأخذ بقول الشافعي ولا بقول مالك (معين الحكام فيما يتردد بين الخصمين من الأحكام للطرابلسي، دار الفكر، ص.٢٧)

[17] Al-Kafawī said: "He was amongst the mujtahids of his era." (*Fawā'id Bahiyya*, p. 263) He was a student of Imām Burhān al-Dīn Marghīnānī, the author of *al-Hidāyah*, and is the author of *Jāmiʿ Ahkām al-Sighār* amongst other works.

[18] وجاز للرجل والمرأة أن ينتقل من مذهب الشافعي إلى مذهب الحنفي وكذا على العكس ولكن بالكلية، أما في مسألة واحدة فلا يمكن، حتى لو خرج دم من حنفي المذهب وسال لا يجوز له أن يصلي قبل أن يتوضأ اقتداء بمذهب الشافعي في هذه المسألة فإن صلى قبل أن يتوضأ يصفع، وقال بعضهم: ليس للعامي أن يتحول من مذهب إلى مذهب حنفيا كان أو شفعويا، وقال بعضهم: من انتقل إلى مذهب الشافعي رحمه الله ليزوجه ولي البكر البالغة بغير رضاها يخاف عليه أن يسلب إيمانه وقت موته لإهانته بالدين لجيفة قذرة (كتاب الكراهة للأسروشني، مخطوط، ص.٩٠/أ)

[19] He was mufti of Sijistān, a learned Imām with extensive knowledge of both fundamentals and peripherals (*al-Fawā'id al-Bahiyyah*, p. 201)

"The slaves are ordered to act on the evidences of Sharī'ah…As far as the generality of the Muslims are concerned, it is not in the capacity of everyone to give preference to evidences and exercise ijtihād, but he must give preference to an Imām he considers, and he will be a follower of him. <u>When he contemplates and gives preference to an Imām over an Imām, and he considers his path true and right, the view of others becomes invalid for him, so it is not permissible for him to act on their madhhab</u>, just like a mujtahid when an evidence is authentic according to him, he does not act on the remaining [evidences]. It is only such because all people are ordered to act on the command of Allah, whether they are scholars or non-scholars, but the scholars are ordered [to do so] with evidences and precedents and giving preference to one of the evidences, and the commoners are ordered to give preference to the scholars as it is not in their capacity [to do] other than that, in order that everyone will be observant of the command of Allāh (Exalted is He)."[20]

Although he does not state it explicitly, the reason why a non-scholar must select one scholar (i.e. mujtahid) he believes is superior – although this was not the rule in the earlier period – is because, as alluded to in this passage, to not do so would negate him being "observant of the command of Allāh" and acting on the "evidences of Sharī'ah". The only reason this would be so is that if the layperson is free to select whatever opinion he pleases, religious compulsion or obligation would be lifted, and he will become a follower of his personal whim as opposed to the Sharī'ah.

Fakhr al-Dīn also said:

"<u>Rigidity in the madhhab is wājib</u>, and fanaticism is impermissible. <u>Rigidity is to act on what is [the of view] his madhhab and he believes it is true and correct</u>, and fanaticism is imprudence and rudeness with respect to the founder of another madhhab, and all that stems from his denigration. That is not permissible, because the Imāms of the Muslims are in search of what is right and they are on the truth"[21]

5. 'Ubayd Allāh ibn 'Umar ibn 'Īsā, <u>Abū Zayd al-Dabūsī</u> (368 – 430 H)[22] said:

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[20] العباد مأمورون بالعمل بدلائل الشرع...أما في حق عامة المسلمين فلا يكون في وسع كل أحد أن يرجح الدلائل ويجتهد لكن ينبغي أن يرجح إماما يرى ويكون متبعا له، فإذا تأمل ورجح إماما على إمام ورأى أن طريقه الحق والصواب بطل عنده قول الباقين، فلا يجوز العمل بمذهبهم كالمجتهد إذا صح عنده دليل لا يعمل بالباقي، وإنما كان كذلك لأن الناس كلهم مأمورون بالعمل بأمر الله، غير أن العلماء مأمورون بالدلائل والنظائر وترجيح أحد الدلائل والعوام مأمورون بترجيح العلماء إذ ليس في وسعهم غير ذلك، ليكون الكل ممتثلين لأمر الله تعالى (جواهر الفتاوى، مخطوط ص.٣١٧/ب–٣١٨/أ)

[21] قال فخر الدين لما سئل عن التعصب فى المذهب، قال: الصلابة فى المذهب واجب والتعصب لا يجوز، والصلابة أن يعمل بما هو مذهبه ويراه حقا وصوابا والتعصب السفاهة والجفاء في صاحب المذهب الآخر وما يرجع إلى نقصه ولا يجوز ذلك فإن أئمة المسلمين كانوا في طلب الحق وهم على الصواب (جواهر الفتاوى، ص.٣٠٩/ب)

[22] He studied fiqh under Abū Ja'far al-Astrūshanī, and was one of the brilliant Hanafī scholars from Transoxiana. (*al-Fawā'id al-Bahiyyah*, p. 109)

"The one who regards the truth as multiple [like the Mu'tazilah] establishes choice for the layperson to select [from them] based on his personal whim. <u>And the one who says the truth is one, he makes it necessary for the layperson to follow one Imām</u>, whose position according to him is that he is the most learned based on the evidence of inspection, and he does not oppose him in anything based on his personal whim." (*Taqwīm al-Adillah*, p. 410)[23]

Al-Arsābandī's statement quoted earlier is a rephrasing of this passage of al-Dabūsī. Hence, the same explanation applies.

6. <u>Zahīr al-Dīn al-Marghīnānī al-Kabīr 'Alī ibn 'Abd al-'Azīz</u> (d. 506) said:

   "A layperson of the Hanafī madhhab bleeds and did not repeat purification, imitating al-Shāfi'ī with respect to this ruling, that is not permissible for him."[24]

7. <u>Shaykh al-Islām Burhān al-Dīn 'Alī ibn Abī Bakr al-Marghīnānī</u> (511 – 593 H)[25] said:

   "A [Hanafī] man suspends divorce of marriage and then he marries a woman and seeks fatwa from [a person belonging to] the Shāfi'ī madhhab, and he issues fatwa according to his madhhab that the divorce has not occurred, it will not be a proof with respect to him."[26]

   If a man were to say, "Every woman I marry is divorced," the suspended divorce takes effect in the Hanafī madhhab but not in the Shāfi'ī madhhab. According to this fatwa of Imām al-Marghīnānī, a Hanafī may not accept the fatwa of a Shāfi'ī who tells him the divorce has not occurred.

In explaining why the early Hanafī scholars obligated the layman to stick to one madhhab, Ibn al-Humām (788 – 861 H) said:

"Most probably the compulsions [of adhering to a single madhhab] such as these from them [i.e. the earlier scholars of the school] was to prevent them [i.e. the laypeople] from

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[23] ومن جعل الحق حقوقا أثبت الخيار للعامي بهوى نفسه. ومن قال الحق في واحد ألزم العامي أن يتبع إماما واحدا وقع عنده بدليل النظر أنه أعلم ولا يخالفه في شيء بهوى نفسه (تقويم الأدلة، دار الكتب العلمية، ص.٤١٠)

[24] عامي حنفي المذهب افتصد ولم يعد الطهارة اقتداء بالشافعي في حق هذا الحكم لا يسوغ له ذلك (القنية للزاهدي، مخطوط، ص.٩٣/أ)

[25] Author of *al-Hidāyah*, an Imām, hāfiz of hadīth and exegete, with innumerable virtues. He was an unmatched authority in the Hanafī madhhab. He studied under Najm al-Dīn 'Umar al-Nasafī, al-Sadr al-Shahīd and others. (*al-Fawā'id al-Bahiyyah*, p. 141)

[26] رجل علق الطلاق بالتزوج ثم تزوج امرأة فاستفتى من شفعوي المذهب فأفتى على مذهبه أن لا يقع الطلاق لا يكون حجة في حقه (مختارات النوازل، مخطوط، ص.٣٦/ب)

seeking out the easiest opinions (*tatabbu' al rukhas*), for otherwise the layperson will select the view of a mujtahid whose opinion is least burdensome on him." (*Fath al-Qadīr*)[27]

Unfortunately, Ibn al-Humām did not agree with this established view and even allowed seeking out the easiest opinions of the madhhabs (*tatabbu' al-rukhas*)! *Tatabbu' al-rukhas* is forbidden by consensus, as stated by Ibn 'Abd al-Barr.[28] The personal opinion of later scholars cannot override the established consensus of the early scholars. In discussing the position attributed to 'Izz al-Dīn ibn 'Abd al-Salām on the permission of *tatabbu' al rukhas*, Imām al-Wanshirīsī al-Mālikī (d. 914 H) said:

"Ibn Hazm and Abu 'Umar [ibn 'Abd al-Barr] have related consensus [on the prohibition of *tatabbu' al-rukhas*], and its basis is transmission, while 'Izz al-Dīn did not clarify any basis for his fatwa, so it may be an opinion that he held and was isolated in, or a consequence of [his] opinion which is what is apparent from the force of his speech. Whatever it may be, it is an innovated view after an earlier consensus, so it is rejected (*bātil*) due to its implication of imputing error on the ummah, and imputing error on them is prohibited as established in the principles of Fiqh."[29]

We will also see from some of the statements of early Imāms that following the codification of the madhhabs, there was consensus that a layperson must adhere to a single madhhab. Hence, this early consensus too may not be superseded by the view of some later scholars.

From these quotes from the early authorities of the madhhab, we learn that the official Hanafī position is that a layperson must stick to a single madhhab, believing all its rulings are correct, and he may not switch madhhabs on single issues. The view of Ibn al-Humām and subsequent scholars in opposition to this cannot override the established position of the madhhab. 'Allāmah Qāsim ibn Qutlūbughā (802 – 879 H) said: "The researches of our teacher [Ibn al-Humām] which are contrary to the madhhab will not be acted upon." (*Sharh 'Uqūd Rasm al-Muftī*, p. 35)

One final point we will mention here is that in the early Hanafī school, some scholars mentioned an exception to this rule, which is that a Hanafī muqallid may accept the fatwa of a Shāfi'ī mufti in the case of the suspended divorce. However, 'Allāmah Ibrāhīm ibn Husayn Bīrī al-Makkī (d. 1099), the Hanafī mufti of Makkah, has explained in a treatise

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[27] وَالْغَالِبُ أَنَّ مِثْلَ هَذِهِ إلْزَامَاتٌ مِنْهُمْ لِكَفِّ النَّاسِ عَنْ تَتَبُّعِ الرُّخَصِ وَإِلَّا أَخَذَ الْعَامِّيُّ فِي كُلِّ مَسْأَلَةٍ بِقَوْلِ مُجْتَهِدٍ قَوْلُهُ أَخَفُّ عَلَيْهِ (فتح القدير، دار الكتب العلمية، ج.٨ ص.٢٣٩)

[28] قال سليمان التيمي: لو أخذت برخصة كل عالم اجتمع فيك الشر كله؛ قال ابن عبد البر معقبا: هذا إجماع لا أعلم فيه خلافا (زجر السفهاء عن تتبع رخص الفقهاء، دار البشائر الإسلامية، ص.٥٠)

[29] ابن حزم وأبو عمر قد حكيا الإجماع ومستنده النقل، وعز الدين لم يبين مستندا فيحتمل أن يكون رأيا رآه فتفرد به، أو لازم قول وهو الظاهر من قوة كلامه، وأيا ما كان فهو إحداث قول بعد تقدم الإجماع فيكون باطلا لتضمنه تخطئة الأمة، وتخطئتها ممتنع على ما تقرر في أصول الفقه (المعيار المعرب، ج.١٢ ص.٣١)

on this subject, called *Ghāyat al-Tahqīq fī ʻAdami Jawāz al-Talfīq fī l-Taqlīd* – in which he addresses a number of other such doubts –, that this is not an example of leaving the madhhab nor is it an exception to the rule. This is because al-Zāhidī (d. 658 H) reported that the "Shāfiʻī view" in this example is an opinion transmitted from Imām Muhammad ibn al-Hasan al-Shaybānī, and many of the early mujtahids from Khawārizm would issue fatwa on it.

In brief, there is nothing in the recorded views of the early mujtahid scholars of the madhhab that upsets the paradigm we have presented.

Statements from the Early Scholars of the Shāfiʻī School

1. Imām al-Haramayn, Abu l-Maʻāli ʻAbd al-Malik ibn Abī Muhammad al- Juwaynī (417 – 478 H)[30] said:

   "If it is said: Is it permissible for a layperson to subscribe in some juristic rulings to the madhhab of al-Shāfiʻī and in some of them to the madhhab of Abū Hanīfah, and likewise the madhhab of all the Imāms in this fashion? If you say: That is permissible, and it is not necessary for anyone to adhere to the founder of a specific madhhab, then there is no need in that case to author this book, because he has no need to recognise the "more correct" and follow what is right and true [according to him], but he does whatever he wishes according to the madhhab of whomsoever he desires.

   "The answer is: We say: It is not permissible for the layperson [to do] what you mentioned. Rather, it is definitely necessary for him to specify a madhhab from these madhhabs, either the madhhab of Al-Shafiʻī – may Allāh be pleased with him – in all cases and subsidiaries, or the madhhab of Mālik or the madhhab of Abū Hanīfah or other than them – the pleasure of Allāh be upon them. He may not subscribe to the madhhab of al-Shāfiʻī in some of what he desires and the madhhab of Abū Hanīfah in the remainder of what he approves, because if we allowed it, that will lead to immense confusion and lack of regulation. Its outcome will be the negation of [religious] obligations and there would be no benefit to the [religious] obligation established on him, since if the madhhab of al-Shāfiʻī necessitates the impermissibility of something and the madhhab of Abū Hanīfah necessitates the permissibility of that very thing or vice versa, if he wishes he may incline towards permissibility and if he wishes he may incline towards impermissibility, so neither permissibility nor impermissibility would be realised. In this is the negation of obligation and nullification of its benefit and uprooting of its foundation. And that is rejected (*bātil*).

[30] He was the shaykh of the Shāfiʻīs in his time. Abu Saʻd al-Samʻānī said: "Abu l-Maʻālī was the absolute imām of imāms, with consensus in the east and the west on his imāmah. Eyes have not seen the like of him." (*Siyar Aʻlām al-Nubalā'*, Mu'assat al-Risālah, 18:469)

"If it is said: Was it not that in the era of the Sahābah, a person was given the option between selecting, in some cases, the madhhab of al-Siddīq, and in some, the madhhab of al-Fārūq, and likewise with respect to all the Sahābah in all cases, and they did not prevent him from that? So since this is permissible amongst the Sahābah, why is it not allowed in our time?

"The answer is that this was only so because the juristic principles of the Sahābah were not adequate for all cases, comprehensive of all rulings, encompassing all subsidiaries, covering all details, because they laid the groundwork, founded principles, paved the foundations and did not dedicate themselves to deriving subsidiaries and elaborating the details. Hence, the madhhab of Abū Bakr was not adequate for all cases, and likewise the madhhab of all Sahābah, so because of necessity, it was permitted for muqallids to follow Abū Bakr in some cases and in that which his opinion was not found, to follow al-Fārūq. As for this era of ours, the madhhabs of the Imāms are adequate and encompassing of all, because there is no case that occurs except that you find it in the madhhab of al-Shāfi'ī or in the madhhab of other than him, either explicitly or by derivation, so there is no necessity to follow two Imāms together." (*Mughīth al-Khalq*, 13-16)[31]

This is a very explicit passage showing the reason for the difference between pre and post codification of the madhhabs.

Al-Juwaynī mentions that, if allowed to follow more than one madhhab, it will lead to two things: one is immense confusion and the other is lack of regulation. It is possible that by "immense confusion" there could be an allusion to the

31 فإن قيل: فهل يجوز للعامي أن ينتحل في بعض المسائل مذهب الشافعي وفي بعضها مذهب أبي حنيفة، وكذا مذهب عامة الأئمة على هذا المنهاج؟ فإن قلتم: يجوز ذلك فلا يجب على أحد اتباع صاحب مذهب بعينه فلا حاجة حينئذ إلى وضع هذا الكتاب لأنه لا أرب له إلى معرفة الأحق واتباع الحق والصدق، بل يفعل ما يشاء على مذهب من يهواه ويتمناه.

فالجواب: قلنا: لا يجوز للعامي ما قلتموه، بل يجب عليه حتما أن يعين مذهبا من هذه المذاهب إما مذهب الشافعي رضي الله عنه في جميع الوقائع والفروع، وإما مذهب مالك أو مذهب أبي حنيفة أو غيرهم رضوان الله عليهم، وليس له أن ينتحل مذهب الشافعي في بعض ما يهواه ومذهب أبي حنيفة في باقي ما يرضاه، لأنا لو جوزناه لأدى ذلك إلى الخبط والخروج عن الضبط، وحاصله يرجع إلى نفي التكاليف ولا يستقر للتكليف عليه فائدة، إذ إن مذهب الشافعي إذا اقتضى تحريم شيء بعينه أو على عكسه فهو إن شاء ما إلى الحل وإن شاء مال إلى الحرمة فلا يتحقق الحل ولا التحريم، وفي هذا انعدام التكليف وإبطال فائدته واستئصال قاعدته وذلك باطل.

فإن قيل: أليس في عهد الصحابة كان الواحد من الناس مخيرا بين أن يأخذ في بعض الوقائع بمذهب الصديق وفى البعض بمذهب الفاروق، وكذا في حق عامة الصحابة في كافة الوقائع ولم يمنعوه عن ذلك؟ فإذا جازت هذه فيما بين الصحابة، فلم لا يجوز في زماننا؟

والجواب: قلنا: إنما ذلك كان كذلك لأن أصول الصحابة لم تكن كافية لعامة الوقائع شاملة لكافة المسائل مستغرقة لجميع التفاريع، مستوفية كلك التفاصيل، لأنهم أسسوا الأساس، وأصلوا الأصول، ومهدوا القواعد، ولم يتفرغوا إلى تفريع التفاريع، وتفصيل التفاصيل، فمذهب أبي بكر رضي الله عنه لم تكن كافية لجميع الوقائع، وكذلك مذهب عامة الصحابة فلأجل الضرورة أبيحت للمقلدين متابعة الصديق في بعض الوقائع، وفيما لم يجد على أصله متابعة الفاروق، وأما في زماننا هذا مذاهب الأئمة كافية مستغقة للكل، فإنه ما من واقعة تقع إلا وتجدها في مذهب الشافعي أو في مذهب غيره إما نصا وإما تخريجا، فلا ضرورة إلى اتباع الإمامين جميعا، فلا يجوز له أن ينقض تقليده إذ لا يستقر للتكليف فائدة (مغيث الخلق، المطبعة المصرية، ص.١٣-١٦)

inconsistency in juristic methodology that would arise if a layperson followed multiple madhhabs. This is supported by his reference to the "principles" of the Sahābah which he states were insufficient for all juristic issues. On the other hand, the principles of the codified madhhabs were complete and applied to more or less all juristic issues. It is because of the insufficiency of the methodologies of the Sahābah that, out of necessity, the layperson was permitted to accept rulings from multiple mujtahids.

"Lack of regulation" refers to, as al-Juwaynī elaborated, the removal of religious obligation, by giving the legally obligated individual the option to choose between different legal rulings on the same issue.

Moreover, al-Juwaynī is emphatic in this ruling, saying it is "definitely" (*hatman*) obligatory on the layperson to adopt a single madhhab, and the repercussions of saying otherwise is something that is outright rejected (*bātil*). Scholars who in the present time hold the same strict stance, therefore, are fully justified in doing so.

2. Recording the position of Shams al-Islām Abu l-Hasan 'Alī ibn Muhammad Ilkiyā al-Harrāsī (450 – 504 H)[32], Imām al-Nawawī said:

   "If [a layperson] is not ascribed [to a madhhab], it is premised on two views, which Ibn Barhān related, in that: Is it necessary for the layperson to adopt a particular madhhab, adopting its dispensations and strictures?...The second [view] is it is necessary for him. Abu l-Hasan al-Ilkiyā positively asserted it, and this applies to all who have not reached the level of ijtihād from the jurists and the adherents of all sciences. Its basis is that if following any madhhab he wished was permissible, it will lead to collecting the dispensations of the madhhabs, in following his desire, and choosing between permission and prohibition, obligation and permissibility, and that will lead to relinquishing the burden of responsibility; as distinguished from the first period [of Islām] because the madhhabs incorporating laws related to all outcomes were not refined. Based on this, it is necessary for one to strive to choose a specific madhhab he will follow. We will pave for him a simple path he should follow when striving to do so. Thus, we say: Firstly, he may not follow in this mere desire and inclination towards what he found his forefathers upon; and he may not adopt the madhhab of any of the Imāms of the Sahabah (Allah be pleased with them) and others from the early ones, even though they were more learned and higher in rank than those who came after them because they did not devote themselves entirely to compiling knowledge and outlining its principles and its branches, so none of them had a refined, codified and approved madhhab, and only those who came after them from the Imāms who were affiliated to the madhhabs of the Sahābah and the

[32] He was the shaykh of the Shāfi'īs, a teacher of the Nizāmiyyah and one of the prime students of Imām al-Juwaynī. (*Tabaqāt al-Shāfi'iyyah al-Kubrā*, 7:231)

Tābiʿin took up this task, undertaking the responsibility of laying down the laws pertaining to all happenings before they occurred, and attempting to clarify their principles and branches, like Mālik, Abū Hanīfah and others." (*Al-Majmūʿ Sharh al-Muhadhdhab*, 1:93)[33]

The position of Ilkiyā al-Harrāsī presented here is similar to that of his teacher, al-Juwaynī. However, here there is the addition that the layperson is obligated to select the madhhab he will follow based on a personal examination of which madhhab he feels is superior. As mentioned earlier, the reason for this obligation is the necessity to have firm belief in the correctness of the legal injunctions one is following.

3. <u>Hujjat al-Islām al-Ghazālī, Abū Hāmid Muhammad ibn Muhammad</u> (450 – 505 H)[34] said while discussing the conditions for condemning a wrong (*munkar*):

   "The fourth condition is that its being *munkar* is known without ijtihād. So all that is in a place of ijtihād, there is no accountability therein. Hence, a Hanafī may not condemn a Shāfiʿī for eating a lizard and hyena and [the animal over which] saying *bismillāh* was left out, and a Shāfiʿī may not condemn a Hanafī for drinking non-intoxicating nabīdh and taking inheritance of distant relatives and residing in a house which he acquired by [the right of] pre-emption of a neighbour, and other such [examples] from the places of ijtihād.

   "Yes, if a Shāfiʿī sees a Shāfiʿī drinking nabīdh and marrying without a guardian and [thereafter] engaging in intercourse with his wife, then this is in a place of consideration. The most apparent [view] is that he has [the right of] taking him to task and rebuking [him]; <u>since none of the scholars have opined that it is permissible for a mujtahid to act on the dictates of the ijtihād of other than him; nor that the one whose judgement in taqlīd led him to a man he considers the best of the scholars that it is permissible for him to select the madhhab of other than him, choosing from the madhhabs the most pleasing of them to him. Rather, it is incumbent on every muqallid to follow his Imām in every detail. Thus, his</u>

[33] وإن لم يكن منتسبا بني على وجهين حكاهما ابن برهان في أن العامي: هل يلزمه أن يتمذهب بمذهب معين، يأخذ برخصه وعزائمه؟...والثاني: يلزمه وبه قطع أبو الحسن إلكيا، وهو جار في كل من لم يبلغ رتبة الإجتهاد من الفقهاء وأصحاب سائر العلوم، ووجهه أنه لو جاز اتباع أي مذهب شاء لأفضى إلى أن يلتقط رخص المذاهب متبعا هواه، ويتخير بين التحليل والتحريم والوجوب والجواز وذلك يؤدي إلى انحلال ربقة التكليف بخلاف العصر الأول، فإنه لم تكن المذاهب الوافية بأحكام الحوادث مهذبة وعرفت، فعلى هذا يلزم أن يجتهد فى اختيار مذهب يقلده على التعيين، ونحن نمهد له طريقا يسلكه فى احتهاده سهلا، فنقول: أولا ليس له أن يتبع في ذلك مجرد التشهي والميل إلى ما وجد عليه آباءه، وليس له التمذهب بمذهب أحد من أئمة الصحابة رضي الله عنهم وغيرهم من الأولين، وإن كانوا أعلم وأعلى درجة ممن بعدهم، لأنهم لم يتفرغوا لتدوين العلم وضبط أصوله وفروعه، فليس لأحد منهم مذهب مهذب محرر مقرر، وإنما قام بذلك من جاء بعدهم من الأئمة الناحلين لمذاهب الصابة والتابعين القائمين بتمهيد أحكام الوقائع قبل وقوعها، الناهضين بإيضاح أصولها وفروعها، كمالك وأبي حنيفة (المجموع شرح المهذب، مكتبة الإرشاد، ج.١ ص.٩٣)

[34] He was the leading student of al-Juwaynī and a major authority in fiqh, usūl and other sciences, famed throughout the Muslim world in both scholarly and non-scholarly circles.

opposition to [his] Imām is by agreement of the scholars a *munkar*, and he is sinful in opposing [him].” (*Iḥyā’ ‘Ulūm al-Dīn*, 2:321)[35]

In this passage, al-Ghazālī has quoted consensus that a muqallid must follow his Imām who he believes is superior to the other Imāms. Moreover, by mentioning that he may not “choose from the madhhabs the most pleasing of them to him,” there is an indication that the reason for this restriction is that it would lead to *tatabbu‘ al-rukhas* and following desires.

Al-Ghazālī further said in the same passage, rejecting the contrary view:

“The view of the one who opines that it is permissible for every muqallid to choose from the madhhabs whatever he wishes is not given consideration. Probably it is not authentic that any opiner opined it at all. So this is a view that is not established, and if established, it is given no consideration.” (*Iḥyā’ ‘Ulūm al-Dīn*, 1:322)[36]

In this passage, it is clear that what al-Ghazālī meant by the muqallid’s “Imām” in the previous passage is his madhhab, and not the individual Imām *per se*. Furthermore, al-Ghazālī knows of no disagreement on the impermissibility of selecting from all the madhhabs as one wishes. Rather, it is necessary to restrict oneself to a single madhhab. And finally, he says, even if anyone were to have disagreed, his opinion is rejected.

In a letter to Qāḍī Abū Bakr al-Mālikī (d. 543 H), Imām al-Ghazālī said:

“It is not permissible for the muqallid of a scholar to choose the most pleasing of the madhhabs to him and the most agreeable to his temperament. He must make taqlīd of his Imām who he believes to have the correct and right madhhab in relation to other than him, and follow him in all that comes and goes. Hence, it is not permissible for a Mālikī to switch to the madhhab of al-Shāfi‘ī unless it overpowers his mind that its opinions are more correct. In that case, it is necessary to make taqlīd of him in all juristic rulings. If it is not that, then there is no motive for him to oppose [his madhhab] except whim, just as it is not permissible for a mujtahid to oppose the conclusions that his ijtihād reached…

35 الشرط الرابع أن يكون كونه منكرا معلوما بغير اجتهاد، فكل ما هي في محل الاجتهاد فلا حسبة فيه. فليس للحنفي أن ينكر على الشافعي أكل الضب والضبع ومتروك التسمية، ولا للشافعي أن ينكر على الحنفي شربه النبيذ الذي ليس بمسكر وتناوله ميراث ذوى الأرحام وجلوسه في دار أخذها بشفعة الجوار إلى غير ذلك من مجارى الاجتهاد. نعم لو رأى الشافعي شافعيا يشرب النبيذ وينكح بلا ولي ويطأ زوجته فهذا في محل النظر، والأظهر أن له الحسبة والإنكار إذ لم يذهب أحد من المحصلين إلى أن المجتهد يجوز له أن يعمل بموجب اجتهاد غيره ولا أن الذي أدى اجتهاده فى التقليد إلى شخص رآه أفضل العلماء أن له أن يأخذ بمذهب غيره فينتقي من المذاهب أطيبها عنده، بل على كل مقلد اتباع مقلده في كل تفصيل فإذن مخالفته للمقلد متفق على كونه منكرا نين المحصلين وهو عاص بالمخالفة (إحياء علوم الدين، كرياطه نوترا، ج.٢ ص.٣٢١)

36 ورأي من يرى أنه يجوز لكل مقلد أن يختار من المذاهب ما أراد غير معتد به ولعله لا يصح ذهاب ذاهب إليه أصلا، فهذا مذهب لا يثبت وإن تبت لا يعتد به (إحياء علوم الدين، ج.٢ ص.٣٢٢)

"It is necessary for every Muslim to follow what overwhelms his mind that it is the most correct in acts of devotion. This condition in the muqallid is achieved by considering what his Imām – whose opinion being sound has overwhelmed his mind – is upon as correct; just as knowledge of the best of doctors in the lands is achieved by the one who is ignorant of it. This is either through hearing from the mouths [of people] or observing most people [going to] a particular person, or his hearing two people or one person whose assessment is good [according to him] and his heart feels comfortable with him; like if he were to hear from his parents the excellence of Mālik and al-Shāfiʿī, and he assents to it and his heart feels comfortable with it. Hence, it is not permissible [for him] to oppose his assessment.

"If he were to say: 'My assessment in other than this legal case is that the one I made taqlīd of is wrong,' muqallids are not entitled to this. His ijtihād in individual issues is an error and it is as though in his mind he knows that which his Imām does not know in other than this issue [in which he made taqlīd of him], and this is ignorance! As for following al-Shāfiʿī in an issue in which he opposed a Sahābī, it is necessary to have the assumption of al-Shāfiʿī that he did not oppose him except for an evidence stronger than the madhhab of the Sahābī. If this was not assumed, he would ascribe to al-Shāfiʿī ignorance of the position of the Sahābī, and this is impossible. This is the reason for giving preference to the madhhab of the later ones [i.e. the four Imāms] over the earlier ones [i.e. the Sahābah], despite knowledge of the superiority of their knowledge over theirs; as the earlier ones heard hadīths solitarily and dispersed in the lands and their fatwas and decrees differed in the lands, and sometimes hadīths reached them and they withheld from what they opined and decreed. In the first era, they did not get involved in collecting hadiths due to their occupation with jihād and laying down [the foundations of] the religion. Then when the people reached [the time of] the successors of the Tābiʿīn, they found Islām settled and established, so they diverted their attention towards collecting hadīths from the furthest lands and places by means of journeys and travels. Thus, the later ones inspected after encompassing all the proofs of the laws, and they did not contravene what was opined in the earlier [period] except for an evidence stronger than it..." (*Al-Miʿyār al-Muʿrib*, 11:164-5)[37]

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[37] لا يجوز لمقلد العالم اختيار أطيب المذاهب عنده وأوفقها لطبعه، وعليه تقليد إمامه الذي اعتقد صحة مذهبه وصوابه على غيره، ويتبعه في كل ما ورد وصدر، فلا يجوز عدول المالكي لمذهب الشافعي إلا أن يغلب على ظنه أنه أصوب رأيا فحينئذ يجب تقليده في جميع المسائل، فإن لم يكن ذلك فلا داعي له فى المخالفة إلا الهوى، كما لا يجوز لمجتهد مخالفة ما أنتجه اجتهاده، وكذا المقلد لمن قلده. ولا فرق إلا طلب المقلد أفضل الآية، والمجتهد أفضل الرأيين، ويجب على كل مسلم اتباع ما يغلب على ظنه أنه الحق فى المتعبدات. وحال المقلد يحصل بتصويب ما عليه إمامه الذي غلب على ظنه صحة قوله، كما يحصل معرفة أفضل الأطباء فى البلدان من كان جاهلا به. وهذا إما بالسماع من الأفواه، أو مشاهدة الأكثرين إلى شخص معين، أو سماعه من شخصين أو شخص حسن ظنه واطمأنه قلبه إليه، كما يسمع من أبويه فضل مالك والشافعي، فيصدق به ويطئن إليه قلبه، فلا تجوز مخالفة ظنه، ولو قال ظني في غير هذه النازلة خطأ من قلدته فليس هذا من حق المقلدين، واجتهاده في أعيان المسائل خطأ وكأنه في ظنه عرف من غير هذه المسألة ما لا يعرفه مقلده، فهو جهل. وأما اتباع الشافعي في مسألة خالف فيها صحابيا فيجب أن يظن بالشافعي أنه لم يخالفه إلا لدليلٍ أقوى من مذهب الصحابي، ولو لم يظن هذا لنسب الشافعي

This is an explicit passage that according to al-Ghazālī, a muqallid must make taqlīd of the madhhab of his Imām in all rulings. He may not follow one madhhab in some rulings and another in other rulings, and al-Ghazālī is clear that the only reason that a muqallid would do this is in following his desires. The limit of a muqallid's ijtihād is to determine that one madhhab appears superior to the other. Beyond that, the muqallid does not have the capacity to adjudicate between the madhhabs on individual points of difference. Hence, he must choose one madhhab he feels is superior and adhere to it completely, as the only reason for shifting in individual rulings would be vain desire (even if the muqallid does not realise it).

4. Shāfi' ibn 'Abd al-Rashīd Abū 'Abdillāh al-Jīlī (470 – 541 H)[38] is referred to in the following passage of al-Zarkashī:

   "If [a muqallid] adhered to a specific madhhab, like [the madhhab of] Mālik or al-Shāfi'ī, and he believed in its superiority in general, is it permissible to oppose his Imām in some juristic rulings and select the opinion of another mujtahid besides him? In this are [the following] views: First, prohibition. Al-Jīlī positively asserted this in *al-I'jāz*, because the view of every Imām is independent in individual cases, so there is no need to shift except following desires, and due to what is in it of following dispensations and playing with religion."[39]

   There is a clear indication in this statement that the only reason the earlier generations did not restrict themselves to a single mujtahid is because there was a need: the rulings of each mujtahid on all juristic issues were not known, making it necessary to refer to multiple mujtahids. Al-Juwaynī was quoted earlier making the same point.

   Furthermore, the reason for restricting oneself to a single madhhab, i.e. the potential of following desires, is also alluded to in this statement. Although al-Jīlī does not say that a layperson must at the outset select a madhhab, but since his reasoning is that to have the option to select from multiple madhhabs bears the

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إلى الجهل بمقام الصحابي، وهو محال. وهذا سبب ترجيح مذهب المتأخرين على المتقدمين، مع العلم بفضل علمهم عليهم، لكون المتقدمين سمعوا الأحاديث آحاداً، وتفرقوا في البلاد، فاختلفت فتاويهم وأقضيتهم في البلاد، وربما بلغتهم الأحاديث ووقفوا عما أفتوا به أو حكموا، ولم يتفرغوا في العصر الأول لجمع الأحاديث؛ لاشتغالهم بالجهاد وتمهيد الدين، فلما انتهى الناس إلى تابعي التابعين وجدوا الإسلام مستقراً ممهداً، فصرفوا هممهم إلى جمع الأحاديث من أقصى البلاد وأقطارها، بالرحلة والأسفار فالمتأخرون نظروا بعد الإحاطة بجميع موارد الأحكام، ولم يخالفوا ما أفتي به أولاً، إلا لدليل بلغهم أقوى منه (المعيار المعرب، ج.١١ ص.١٦٤-٥)

[38] A senior Shāfi'ī scholar who studied under both Ilkiyā al-Harrāsī and al-Ghazālī.

[39] فلو التزم مذهبا معينا كمالك والشافعي واعتقد رجحانه من حيث الإجمال، فهل يجوز أن يخالف إمامه في بعض المسائل ويأخذ بقول غيره من مجتهد آخر؟ فيه مذاهب: أحدها المنع وبه جزم الجيلي فى الإعجاز، لأن قول كل إمام مستقل بآحاد الوقائع، فلا ضرورة إلى الإنتقال إلا التشهي، ولما فيه من اتباع الترخص والتلاعب بالدين. (البحر المحيط، دار الصفوة، ج.٦ ص.٣٢٠)

consequence of following desires and playing with the dīn, it would entail that his opinion is it is necessary for a layperson to choose one madhhab he will follow in all its rulings. Safī al-Dīn al-Hindī (644 – 715 H) said after mentioning this very reasoning:

"This evidence demands that it is necessary for the layperson to subscribe to a specific madhhab <u>at the outset</u>."[40]

Moreover, it is also clear from this passage that al-Jīlī saw no reason why a muqallid would shift from one madhhab to another – when there was no dire need as in the early period – besides following vain desire (*tashahhī*).

5. <u>Al-Qaffāl al-Marwazī, Abū Bakr 'Abdullāh ibn Ahmad</u>'s (327 – 417 H)[41] opinion is mentioned in the following passage from al-Nawawī's *Sharh al-Muhadhdhab*:

   "Shaykh [Abū Muhammad al-Juwaynī] said: It will be considered if he [i.e. the layperson] is ascribed to a madhhab, we will premise it on two views which al-Qādī Husayn related in that the layperson does he have a madhhab or not?...The second, and this is the most authentic according to al-Qaffāl, is that he does have a madhhab, so it is not permissible for him to oppose it." (*al-Majmū' Sharh al-Muhadhdhab*, 1:93)[42]

   In explaining al-Qaffāl's view, Ibn al-Salāh states:

   "Because he believes that the madhhab which he is ascribed to is the truth and he gave it preference over other than it, so he must follow through with the demand of this belief of his. Hence, if he is a Shāfi'ī he may not seek fatwa from a Hanafī, nor oppose his Imām."[43]

   This proves that according to al-Qaffāl once a muqallid has selected a madhhab, he must adhere to it in all its rulings.

6. The "<u>Ashāb al-Wujūh</u>" were major early mujtahids in the Shāfi'ī madhhab, generally having lived between the third and fifth centuries. Al-Nawawī describes them as follows: "A mujtahid restricted to the madhhab of his Imām, independent

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[40] وهذا الدليل يقتضي أن يجب على العامي أن ينتحل مذهبا معينا ابتداء (نهاية الوصول، المكتبة التجارية، ص.٣٩٢٠)

[41] He was the greatest Shāfi'ī jurist of his time. (*Siyar A'lām al-Nubalā'*, 17:406)

[42] قال الشيخ: ينظر: إن كان منتسبا إلى مذهب بنيناه على وجهين حكاهما القاضي حسين في أن العامي هل له مدهب أم لا؟...والثاني وهو الأصح عند القفال: له مذهب فلا يجوز مخالفته (المجموع شرح المهذهب، ص.٩٣)

[43] لأنه اعتقد أن المذهب الذى انتسب إليه هو الحق ورجه على على غيره فعليه الوفاء بموجب اعتقاده ذلك، فإن كان شافعيا لم يكن له أن يستفتي حنفيا ولا يخالف إمامه (أدب المفتي والمستفتي، دار المعرفة، ص.٨٧)

in establishing his viewpoints with evidence, although he does not go beyond the foundations of his Imām and his principles in his evidences. His condition is knowledge of jurisprudence and its principles and the detailed evidences of laws, and insight into the methodology of [drawing] legal analogies and [determining] the *ratio legis*. [He is] fully trained in extraction and derivation, capable of linking what is not explicitly mentioned by his Imām to his principles." Al-Nawawī then said: "This is a description of our Ashāb, the Ashāb al-Wujūh." (*Sharh al-Muhadhdhab*, p. 76) Some examples of Ashāb al-Wujūh are: Abū 'Alī al-Husayn ibn Sālih ibn Khayrān (d. 320 H), Abū Yahyā Zakariyyā ibn Ahmad al-Balkhī (d. 330 H), Zāhir ibn Ahmad al-Sarakhsī (d. 389 H) and Abū Bakr al-Awdanī (d. 385 H).

Al-Nawawī said:

"If [a layperson] is not ascribed [to a madhhab], it is premised on two views, which Ibn Barhān related from our Ashāb, in that: Is it necessary for the layperson to adopt a particular madhhab?...The second it is necessary for him. Abu l-Hasan al-Ilkiyā positively asserted it, and this applies to all who have not reached the level of ijtihād from the jurists and the adherents of all sciences. [This is so] in order that he does not collect the dispensations of the madhhabs; as distinguished from the first era when the madhhabs were not codified such that their dispensations may be collected. Based on this, it is necessary for one to strive to choose a specific madhhab he will follow <u>in everything</u>. He may not adopt a madhhab based merely on whim, nor with what he found his forefathers upon. <u>This is the statement of the Ashāb</u>." (*Rawdat al-Tālibīn*, 8:101)[44]

In explaining the view of the Ashāb, al-Nawawī clearly mentions that in the early period the laypeople were not able to seek out the easiest opinions of the mujtahids, precisely because their madhhabs were not codified.

In short, there is very strong support from within the early Shāfi'ī school for the paradigm of taqlīd we have proposed in the introduction. Furthermore, Imām al-Ghazālī effectively quoted consensus on this ruling, and as mentioned earlier, the disagreement of later scholars cannot override the binding consensus of the earlier jurists.

<u>Statements from the Early Scholars of the Mālikī School</u>

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44 وهل يجوز للعامي أن يتخير ويقلد أي مذهب شاء نظر إن كان منتسباً إلى مذهب بني على وجهين حكاهما القاضي حسين في أن العامي هل له مذهب أم لا أحدهما لا لأن المذهب لعارف الأدلة فعلى هذا له أن يستفتي من شاء وأصحهما عند القفال له مذهب فلا تجوز مخالفته وإن لم يكن منتسباً بني على وجهين حكاهما ابن برهان بفتح الباء من أصحابنا في أن العامي هل يلزمه التقيد بمذهب معين أحدهما لا فعلى هذا هل له أن يقلد من شاء أم يبحث عن أسد المذاهب فيقلد أهله وجهان كالبحث عن الأعلم والثاني وبه قطع أبو الحسن إلكيا يلزمه وهو جار في كل من يبلغ رتبة الاجتهاد من الفقهاء وأصحاب سائر العلوم لئلا يتلقط رخص المذاهب بخلاف العصر الأول ولم تكن مذاهب مدونة فيتلقط رخصها فعلى هذا يلزمه أن يختار مذهباً يقلده في كل شيء وليس له التمذهب بمجرد التشهي ولا بما وجد عليه أبده هذا كلام الأصحاب والذي يقتضيه الدليل أنه لا يلزمه التمذهب بمذهب بل يستفتي من شاء أو من اتفق لكن من غير تلقط للرخص ولعل من منعه لم يثق بعدم تلقطه (روضة الطالبين، دار عالم الكتب، ج.٨ ص.١٠١)

1. Shaykh al-Islām Qādī Abu l-Fadl ʿIyād ibn Mūsā (476 – 544 H)[45] said:

"Know – may Allāh give us and you success – that the ruling of the one devoted to the orders of Allāh (Exalted is He) and His prohibitions, obedient to the Sharīʿah of His Prophet (Allāh bless him and grant him peace), is to seek acquaintance of this and that with which he will render devotion [to Allāh] and that which he will perform and will omit, and [that which] is necessary for him and forbidden, and [that which] is permissible for him and encouraged, from the Book of Allāh and the Sunnah of His Prophet, for they are the two foundations which the Sharīʿah is known only by means of and Allāh is rendered devotion only by knowledge of.

"Furthermore, the consensus of the Muslims is built upon them, and dependent on them. Thus it cannot be found nor convened, except [based] on them, either from a text which they knew and then did not transmit or from a deduction based on them – based on the view that a consensus via the route of ijtihād is valid.

"All of this will not be complete except after making knowledge of them, and the means and tools allowing him to reach it, a reality, in terms of transmission and reason, and pursuit of it, collection and retention, and knowledge of what is sound from the traditions and famous, and acquaintance of how to gain understanding, and that by which he will gain understanding, in terms of knowledge of the outward of the words, which is knowledge of Arabic and language, and knowledge of their meanings and the meanings of the intent of Sharīʿah and its objectives, and the clear directive of speech, its outward and its purport and all its angles, which is termed "knowledge of the principles of jurisprudence", most of which is connected to knowledge of Arabic and the objectives of speech and conversation, and then [knowledge of] the source of making a [legal] analogy of what has not been explicitly stated on what has been explicitly stated, drawing attention to the presence of the legal reason in it or its resemblance to it.

"All of this requires time, while devotion [to Allāh and Sharīʿah] is necessary immediately. Moreover, those who have reached this road, which is the road of ijtihād and ruling by it in the Sharīʿah, are few and fewer than few after the first era and the righteous Salaf and the praiseworthy three generations.

"Since this is so, it is necessary for the one who has not reached this position from the legally responsibility individuals (*muakkallafīn*) to receive what he will render devotion with and which he was legally obligated with, in terms of the tasks of Sharīʿah, from those who transmit it to him, and make him aware of it, and [who] he depends on in his transmission, knowledge and assessment. This is taqlīd, and the rank of the common people, nay most of them [i.e. people], is this!

[45] One of the leading scholars of his time, author of the renowned and indispensable work, *al-Shifāʾ*, commentator of *Sahīh Muslim*, and, like al-Ghazālī, in need of no introduction.

"Since this is so, it is necessary to make taqlīd of a scholar that is dependable upon in that, and when the scholars become abundant, then the most learned.

"This is the share of the muqallid in terms of ijtihād (exercising judgement) for his religion. The muqallid will not abandon the most learned and go towards other than him, even if he [too] is engaged in knowledge. Thus, he will ask about that of which he does not have knowledge until he knows, just as Allāh (Exalted is He) said: 'Ask the people of knowledge if you do not know.' And the Prophet (Allāh bless him and grant him peace) ordered imitation of the caliphs after him and his companions, and indeed the Prophet (Allāh bless him and grant him peace) dispatched his companions amongst the people to teach them the understanding of religion, and teach them what is prescribed upon them, and Allāh (Exalted is He) encouraged all of them, that from each group a party of them go forth in order to gain understanding in the religion and warn their people when they return to them. (Qur'ān, 9:122)

"Since this matter is necessary and inevitable, and the most worthy and deserving of those who the ignorant layperson and the novice worshipper and the student seeking guidance and the one seeking understanding in the religion of Allāh make taqlīd of are the jurists of the companions of the Messenger of Allāh (Allāh bless him and grant him peace), who took knowledge from him and knew the reasons for the revelation of the commands and prohibitions, and the functions of the laws, and the contexts of his (upon him peace) speech, and they witnessed the indications of it, and they spoke directly in most of them with the Prophet (upon him peace), and they asked him about them, along with what they were upon of vast knowledge and acquaintance with the meanings of speech and illumination of hearts and expansion of breasts, so they were indisputably the most learned of the Imāms, and the worthiest of them to make taqlīd of, but they did not speak about the legal cases except in the small number [of them] that arose, nor were juristic rulings derived by them, and they did not speak about the Sharī'ah except of principles and events, and most of their occupation was in acting on what they knew, and defence of the territory of religion, and consolidating the Sharī'ah of the Muslims. Moreover, there is disagreement amongst them in some of what they spoke of, which will leave the muqallid in confusion, and will force him to contemplate and have reservation.

"Derivation [of subsidiary rulings], drawing results and elaborating the [points of] discussion in that which is expected to occur only came after them. Thus, the Tābi'ūn came, and they analysed their disagreement and they built on their foundations, and then after them scholars arose from the successors of the Tābi'ūn, and events became numerous, legal cases took place, and the fatwas on them became diverse, so they gathered the views of all [scholars], and they preserved their jurisprudence, and they researched their disagreement and their agreement, and they were cautious of the matter becoming dispersed and the disagreement going out of control, so they exercised their reasoning in collecting

the traditions and regulating the principles, and they were asked and they answered, and they founded principles and paved foundations and derived legal rulings based on them, and they authored for the people works on this and arranged them into chapters, and each of them acted in accordance with what was inspired to him and he was granted accordance to [do], so the knowledge of principles and subsidiaries, disagreement and agreement, reached its peak with them, and they drew analogy on what reached them of what it indicates to or it resembles. May Allāh be pleased with them all and give them the full reward for their efforts.

"Thus, it is stipulated for the lay muqallid and the novice seeker of knowledge to refer in [his] taqlīd to these [mujtahids] for the texts of his legal cases, and refer to them in what is unclear [to him] therefrom, due to the encompassment of the science of Sharī'ah and its revolving around them, and their excellence in analysing the madhhabs of those who came before them, and their sufficing of that for those who came after them.

"However, <u>taqlīd of all of them will not be possible in most legal cases and the majority of rulings, due to their disagreement based on the different principles on which they built [the rulings]</u>. And it is not correct for a muqallid to make taqlīd of whosoever he wishes from them based on whim and chance, or based on what he finds the people of his vicinity and his family upon.

"Thus, his share here of ijtihād is analysing the most learned of them, and gaining recognition of the worthiest of the totality of them for taqlīd, so that the layperson will incline in his deeds to his fatwas, and will rely in his acts of piety on what he opined...<u>It is not permissible for him to trespass in consulting those whose madhhab he does not adhere to for fatwa, since some of the elders said: 'The Imām for the one who adopts his madhhab is like the Prophet (upon him peace) with his ummah – it is not permissible for him to oppose him.' This is correct in terms of reasoning, and in what we elaborated, its soundness is manifest to the people of insight</u>.

"…Once this introduction is established, we say: <u>The consensus of the Muslims in all places of earth has occurred on taqlīd in this fashion</u>, and adherence of them, and studying their madhhabs and not those before them, while acknowledging the excellence of those before them and their priority and their superior knowledge, but the problems [in following them] are as we described and the sufficiency of what they selected from them is as we mentioned earlier.

"…<u>The people today in all the lands of the world have evolved into five madhhabs: Mālikīs, Hanafīs, Shāfi'īs, Hanbalīs and Dāwūdīs – and they are known as Zāhirīs. Thus, it is incumbent on a student of knowledge and the one wishing to gain acquaintance of what is true and correct to recognise the most worthy of</u>

them of taqlīd, in order to depend on his madhhab and tread his path in seeking jurisprudential knowledge." (59 – 67)[46]

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[46] اعلموا وفقنا الله تعالى وإياكم أن حكم المتعبد بأوامر الله تعالى ونواهيه المتشرع بشريعة نبيه عليه السلام طلب معرفة ذلك وما يتعبد به، وما يأتيه ويذره، ويجب عليه ويحرم، ويباح له ويرغب فيه من كتاب الله تعالى وسنة نبيه عليه السلام، فهما الأصلان اللذان لا تعرف الشريعة إلا من قبلهما ولا يعبد الله تعالى إلا بعلمهما ثم إجماع المسلمين مرتب عليهما ومسند إليهما فلا يصح أن يوجد وينعقد إلا عنهما، إما من نص عرفوه ثم تركوا نقله، ومن اجتهاد مبني عليهما على القول بصحة الإجماع من طريق الاجتهاد، وهذا كله لا يتم إلا بعد تحقيق العلم بذلك الطريق والآلات الموصلة إليه من نقل ونظر وطلب قبله وجمع وحفظ وعلم وما صح من السنن واشتهر، ومعرفة كيف يتفهم وما به يتفهم من علم ظواهر الألفاظ وهو علم العربية واللغة وعلم معانيها وعلم موارد الشرع ومقاصده ونص الكلام وظاهره وفحواه وسائر نواحيه وهو المعبر عنه بعلم أصول الفقه وأكثره يتعلق بعلم العربية ومقاصد الكلام والخطاب، ثم يأخذ قياس ما لم ينص عليه على ما نص بالتنبيه على علته أو شبيهاً له. وهذا كله يحتاج إلى مهلة والتعبد لازم لحينه، ثم إن الواصل إلى هذا الطريق وهو طريق الاجتهاد والحكم به في الشرع قليل وأقل من القليل بعد الصدر الأول والسلف الصالح والقرون المحمودة الثلاثة وإذا كان هذا فلا بد لمن لم يبلغ هذه المنزلة من المكلفين أن يتلقى ما تعبد به وكلف به من وظائف شريعته ممن ينقله له ويعرفه به ويثبته عليه في نقله وعلمه وحكمه وهو التقليد ودرجة عوام الناس بل أكبرهم هذا، وإذا كان هذا فالواجب تقليد العالم لموثوق بذلك، فإذا كثر العلماء فالأعلم وهذا حظ المقلد من الاجتهاد لدينه ولا يترك المقلد الأعلم ويعدل إلى غيره وإن كان يشتغل بالعلم فيسأل حينئذ عما لا يعلم حتى يعلمه. قال الله تعالى:)فاسألوه أهل الذكر إن كنتم لا تعلمون(وأمر النبي صلى الله عليه وسلم بالإقتداء بالخلفاء بعده وأصحابه، وقد بعث النبي صلى الله عليه وسلم أصحابه في الناس ليفقهوهم في الدين، ولينذروا قومهم إذا رجعوا إليهم وإذا كان هذا الأمر لازماً لا بد منه فكان أولى من قلده العامي الجاهل)والمبتدىء(المتعبد والطالب المسترشد والمتفقه في دين الله تعالى وأحق بذلك فقهاء أصحاب رسول الله صلى الله عليه وسلم الذين أخذوا عنه العلم وعلموا أسباب نزول الأوامر والنواهي ووظائف الشرائع ومخارج كلامه عليه السلام. وشاهدوا قرائن ذلك وثاقبوا في أكثرها النبي عليه السلام واستفسروه عنها مع ما كانوا عليه من سعة العلم ومعرفة معاني الكلام وتنوير القلوب وانشراح الصدور، فكانوا أعلم الأمة بلا مرية وأولاهم بالتقليد لكنهم لم يتكلموا من النوازل إلا في اليسير مما وقع، ولا تفرعت عنهم المسائل ولا تكلموا من الشرع إلا في قواعد ووقائع، وكان أكثر اشتغالهم بالعمل مما علموا والذبّ عن حوزة الدين وتوكيد شريعة المسلمين ثم بينهم من الاختلاف في بعض ما تكلموا فيه ما يبقي المقلد في حيرة ويحوجه إلى نظر وتوقف، وإنما جاء التفريع التنتيج وبسط الكلام فيما يتوقع وقوعه بعدهم، فجاء التابعون فنظروا في اختلافهم وبنوا على أصولهم ثم جاء من بعدهم العلماء من أتباع التابعين، والوقائع قد كثرت والنوازل قد حدثت، والفتاوى في ذلك قد تشعبت فجمعوا أقاويل الجميع وحفظوا فقههم وبحثوا عن اختلافهم واتفاقهم وحذروا انتشار الأمر وخروج الخلاف عن الضبط فاجتهدوا في جمع السنن وضبط الأصول وسألوا فأجابوا وبنوا القواعد ومهدوا الأصول وفرعوا عليها النوازل ووضعوا في ذلك للناس التصانيف وبوبّوها، وعمل كل واحد منهم بحسب ما فتح عليه ووفق له، فانتهى إليهم علم الأصول والفروع والاختلاف والاتفاق وقاسوا على ما بلغهم ما يدل عليه ويشبه، رضي الله عن جميعهم ووفاهم أجر اجتهادهم فالمتعين على المقلد العامي وطالب العلم المبتدىء أن يرجع في التقليد لهؤلاء لنصوص نوازله والرجوع فيما أشكل من ذلك إليهم، ولاستغراق علم الشريعة ودورها عليهم وأحكامهم النظر في مذاهب من تقدمهم وكفايتهم ذلك لمن جاء بعدهم، لكن تقليد جميعهم لا يتفق في أكثر النوازل وجمهور المسائل لاختلافهم باختلاف الأصول التي بنوا عليها ولا يصلح أن، يقلد المقلد من شاء منهم على الشهوة والبحث أو على ما وجه عليه أهل قطره وآله، فحظه هنا من الاجتهاد النظر في أعلمهم ويعرف الأولى بالتقليد من جملتهم حتى يركن العامي في أعماله إلى فتواه ويجتهد في تعبداته على ما رآه وينصب العامي الأعلم من ملتزمي مذاهب هؤلاء منصبه، ولا يحل له أن يعدو في استفتائه من لا يرى مذهبه، فقد قال بعض المشائخ: إن الإمام لمن التزم تقليد مذهبه كالنبي عليه السلام مع أمته، ولا يحل له مخالفته. وهذا صحيح في الاعتبار مما بسطناه وشرطناه يظهر صوابه لأولي البصائر والأبصار وكذلك يلزم هذا طالب العلم في بدايته في درس ما أصله الأعلم من هؤلاء وفرعه وحفظ ما ألفه وجمعه والاهتداء بنظره في ذلك والميل حيث مال معه إذ لو ابتدأ الطالب في كل مسألة فطلب الوقاف على الحق منها بطريق الاجتهاد عسر عليه ذلك إذ لا يتفق له إلا بعد جمع خصاله وتناهي كماله، وإذا كان بهذا السبيل استغنى عن تقليد أرباب المذاهب وكان من المجتهدين لنفسه فسبيله أن يقلد من يعرفه أن، هذا هو الحق، حتى إذا أدرك من العلم ما قيض له وحصل منه ما قسم الله تعالى له وأفلح وكان فيه عمل للنظر والاجتهاد انتقل إلى ذلك وأدركه، فإذا تقررت هذه المقدمة فنقول: قد وقع إجماع المسلمين في أقطار الأرض على تقليد هذا النمط واتباعهم ودرس مذاهبهم دون من قبلهم ومع الاعتراف بفضل من قبلهم وسبقه ومزيد علمه، لكن للعلل التي ذكرنا وكفاية ما نحلوه وانتقوه من ذلك كما قدمنا...وصار الناس اليوم في أقطار الدنيا إلى خمسة مذاهب: مالكية وحنفية وشافعية وحنبلية وداودية وهم المعروفون بالظاهرية، فحق على طالب العلم ومريد تعرف الصواب والحق أن يعرف أولاهم بالتقليد ليعتمد على مذهبه ويسلك فى التفقه سبيله (ترتب المدارك وتقريب السالك لمشرفة أعلام مذهب مالك، المملكة المغربية، ص.٥٩-٦٧))

The important points to note from this lengthy passage of Qādī ʻIyād are, firstly, that he notes most people in his time were muqallids; secondly, the reason it is not possible to follow the madhhab of a single Sahābī is that no Sahābī has a unified madhhab relating to all issues of jurisprudence; thirdly, and perhaps most importantly, Qādī ʻIyād identifies the reason why it is necessary to adhere to one madhhab as the different principles of each madhhab on which they based their rulings – following all of them, therefore, will result in a contradiction in the outcome; finally, he relates consensus on this type of taqlīd i.e. the obligation of adhering to a single madhhab one believes to be superior to the others.

2. Imām al-Māzirī, Abū ʻAbdillāh Muhammad ibn ʻAlī al-Tamīmī (453 – 536 H)[47] said:

"When a question came to me from Tūnis – Allāh protect it – when a man who a long time ago had studied part of the science of Usūl under me had married a woman and divorced her thrice, and then considered her permissible [for him], after a man solemnised [the marriage] with her and did not have intercourse with her, so a question about him came to me from the judge and the jurists of the city, I reprimanded him excessively, and I went into excess, until he thought I gave them permission to punish him! I mentioned that this is a door, if opened, repercussions would occur in terms of religion and consequences in terms of adherence to the laws [of Sharīʻah].

"…That which I believe of the resolute religion is that it is prohibited to exit the madhhab of Mālik and his companions as a protection against the path [towards the negative repercussions]. If this was legalised, a man would say: I will sell one dinar for two dinars due to what was narrated from Ibn ʻAbbās and then someone will come who will say: I marry a woman and I make her private part lawful without a guardian nor witnesses in imitation of Abū Hanīfah with respect to the guardian and of Mālik with respect to witnesses, and I will marry her for a meagre price in imitation of al-Shāfiʻī. This is the greatest opportunity for disaster. This practice would be severed in the earlier times, despite the scrupulousness of its people and their fear of their honour and their religion. So what of when the matter has reached a time wherein its people have fallen short of the conditions of those who came before in such a way that is not hidden to the intelligent. This is a time when it is more suitable to cut off the substances of laxity in religious matters. …You see our imams who would fear Allāh (Great and Glorious is He) exaggerate in condemning laxity in the matter of religion and leaving one madhhab for another madhhab, due to what it will lead to in terms of corruption." (*Fatāwa l-Māzirī*, al-Dār al-Tūnisiyyah, 151-3)

In this passage, al-Māzirī explains the importance of regulatory measures to keep laypeople in check from falling into unwanted consequences. Two such consequences he refers to in this passage are: adopting *shadhdh* opinions, such as

[47] A major Mālikī Imām, commentator of *Sahīh Muslim*, and a teacher of Qādī ʻIyād

Ibn 'Abbās's opinion of allowing the sale of one dirham for two dirhams on spot; and *talfīq* as in the example of the marriage that he described made up of the opinions of three different madhhabs.

Al-Māzirī also mentions in this passage that scholars had put these measures before his time also. There is in fact a reference to Mālikī scholars restricting the muftis to giving fatwa only on the madhhab of Imām Mālik as far back as the early third century. Wanshirīsī reports from al-Hārith ibn Miskīn (d. 250 H) and Sahnūn (d. 240 H) that they forbade the muftis of their areas from issuing fatwa on other than the madhhab of Mālik (*al-Mi'yār al-Mu'rib*, 12:26). And as mentioned earlier, quoting from Safī al-Dīn al-Hindī, "This evidence demands that it is necessary for the layperson to subscribe to a specific madhhab <u>at the outset.</u>"

<u>Statements from the Hanbalī School</u>

1. <u>Najm al-Dīn Ahmad ibn Hamdān ibn Shabīb al-Harrānī al-Misrī al-Faqīh</u> (603 – 695 H)[48] said:

   "<u>It is necessary for every muqallid to adhere to a specific madhhab in the most famous [view] and not make taqlīd of other than its adherents</u>." (*al-Insāf*, 11:194)[49]

   With the final clause, "and not make taqlīd of other than its <u>adherents</u>," Ibn Hamdān clarifies that the obligation is to restrict oneself to the body of scholars represented by the madhhab, and not only the founder of the madhhab.

   Ibn Hamdān also reproduces the statement of al-Nawawī quoting from the Ashāb in his famous work on the protocols of fatwa *Sifat al-Fatwā wa l-Muftī wa l-Mustaftī* (al-Maktab al-Islāmī, p 72)

<u>"The Layperson has no Madhhab"?</u>

The statement "the layman has no madhhab" (*al-'āmmī lā madhhaba lahū*) was mentioned by some scholars[50]. This rule applies only to the situation before the codification of madhhabs, as expressed by al-Juwaynī amongst others.

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[48] He was a leading Hanbalī authority in his time, his most senior teacher being 'Abd al-Qādir al-Ruhāwī (536 – 612 H). Ibn Rajab al-Hanbalī said: "Knowledge of the [Hanbalī] madhhab, its subtleties and its obscurities, reached its peak in him." (*al-Dhayl 'alā Tabaqāt al-Hanābilah*, Maktabah al-'Abīkān, 4:267)

[49] وقال فى الرعاية الكبرى: يلزم كل مقلد أن يلتزم بمذهب معين فى الأشهر، فلا يقلد غير أهله (الإنصاف، ج.١١ ص.١٩٤)

[50] وحكى الرافعي عن أبي الفتح الهروي أحد أصحاب الإمام [الشافعي] أن مذهب عامة أصحابنا أن العامي لا مذهب له (البحر المحيط، ج.٦ ص.٣٢٠)

Nāsir al-Dīn Abu l-‘Abbās Ahmad ibn Muhammad Ibn al-Munayyir al-Mālikī (620 – 683 H)[51] said:

“Proof dictates [the necessity of] adherence to a specific madhhab after [the codification of the madhhabs of] the four Imāms not before them. The difference is that the people before the four Imāms did not codify their madhhabs, nor did the legal cases arise in large numbers upon them, such that the madhhab of each of them may be known in all cases or in most of them. The one who asks fatwa of al-Shāfi‘ī, for example, had no knowledge of what the mufti will say because his madhhab was not well-known in that case, or it did not arise before that so it is inconceivable that [anyone] supported it besides the mind of a specific [mufti]. As for after the madhhabs were understood, codified and became famous, and the dispensation was known from the strictures in every case, then a questioner will not alternate – when the condition is such – from madhhab to madhhab except due to an inclination to break away [from responsibility] and seeking ease.”[52]

In this very clear passage, Ibn al-Munayyir explains that before the codification of madhhabs there was little scope to seek out the easiest opinions of the scholars. However, after the codification of the madhhabs, it would be easy to find the easiest opinion on each issue. Thus, at this time, restricting oneself to a single madhhab became necessary, as a regulatory measure. Hence, the rule, “The layperson has no madhhab” is applicable to the period before the codification of madhhabs.

Stating this explicitly, Ibn Hajar al-Haytamī from the late Shāfi‘ī school said:

“The claim that the layperson has no madhhab is rejected. Rather, taqlīd of a recognised madhhab is necessary for him. That [i.e. the layperson having no madhhab] was before the codification of madhhabs and their settlement.”[53]

The rule “the layperson has no madhhab” also applies to those situations, times and places where it would be very difficult or even impossible to obligate a layperson to

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[51] One of the outstanding Egyptian scholars, about whom ‘Izz al-Dīn ibn ‘Abd al-Salām said: “The Egyptian lands boasts of two men on its borders: Ibn al-Munayyir in Alexandira and Ibn Daqīq al-‘Īd in al-Qaws.” (Editor’s introduction to *al-Taysīr al-‘Ajīb fi Tafsīr al-Gharīb*, Dār al-Gharb al-Islāmī, p. 17)

[52] وتوسط ابن المنير فقال: الدليل يقتضي التزام مذهب معين بعد الأئمة الأربعة لا قبلهم، والفرق أن الناس كانوا قبل الأئمة الأربعة لم يدونوا مذاهبهم ولا كثرت الوقائع عليهم، حتى عرف مذهب كل واحد منهم في كل الوقائع وفي أكثرها، وكان الذي يستفتى الشافعي مثلا لا علم له بما يقوله المفتي، لأنه لم يشتهر مذهبه في تلك الواقعة، أو لأنها ما وقعت له قبل ذلك، فلا يتصور أن يعضده إلا سر خاص، وأما بعد أن فهمت المذاهب ودونت واشتهرت وعرف المرخص من المشدد في كل واقعة، فلا ينتقل المستفتي والحالة هذه من مذهب إلى مذهب إلا ركونا إلى الانحلال والاستسهال (البحر المحيط، ج.٦ ص.٣١٩-٢٠)

[53] وزعم أن العامي لا مذهب له ممنوع بل يلزمه تقليد مذهب معتبر، وذاك إنما كان قبل تدوين المذاهب واستقرارها (تحفة المحتاج بشرح المنهاج، دار الكتب العلمية، ج.١ ص.٤٨٧)

adhere to a single madhhab, due to complete ignorance or lack of access to all the positions of one madhhab. Some of the later scholars have mentioned this.[54]

However, in normal circumstances, due to the reasons that have been explained, a layperson must adhere to a single madhhab in all its rulings.

Conclusion

There are strong positions in all four madhhabs on the obligation to restrict oneself to a single madhhab. Major scholars from the fifth century of Hijrah quoted consensus on this ruling. The reasons for the ruling have been explained in detail above, and will be summarised below. The scholars who in the present time strictly uphold this view are, therefore, completely justified in doing so.

There were certainly a number of latter-day scholars that tended towards the view of unrestricted taqlīd. The primary reason for this is that some influential scholars supported this opinion after the earlier consensus in opposition to it. Examples include al-Nawawī, al-Qarāfī, Ibn al-Humām and Ibn Taymiyyah. However, as mentioned earlier in the brief discussion on *tatabbu‘ al-rukhas*, the personal opinions of later scholars cannot supersede an earlier consensus, nor can they form the basis of the official position of the respective schools when the situation under question has remained unchanged.

Moreover, the scholars who give permission for unrestricted taqlīd generally accept the consensus on the prohibitions of *tatabbu‘ al-rukhas*, following desires and talfīq. Since it is almost impossible to keep the common people from falling into these patterns, the scholars of the present time who support this view should, based on the principle of closing the avenues to impermissible ends (*sadd al-dharā’i‘*), put effective measures to avoid these unwanted outcomes. This can only be achieved by limiting them to choose the opinions of a single madhhab.

Summary of Main Points

- Before the codification of the madhhabs, in approximately the first three centuries of Islām, the common Muslim was permitted to accept the opinions of multiple mujtahids.
- The reason for this is that the common Muslim did not have access to a complete codified set of laws from any single person or school at this time, so it was not generally possible to follow a single mujtahid or school.
- Because different madhhabs with detailed rules on all chapters of jurisprudence were not yet codified or well-known, an opinion the common Muslim was exposed to was probably the only opinion on that issue he would know. Hence, he would rarely have the option to select between different viewpoints on single

[54] قال عن العلامة أبي بكر بن أبي قاسم الأهدل: وما أفتى به من أن العامي لا مذهب له معين تكاد أن تتعين الفتوى به في حق العوام في هذه الأزمنة، وإن كان عن المتأخرين المصحح من أنه يجب عليه التزام مذهب معين، لكن من خبر حال العوام في هذا الزمان، سيما أهل البوادي منهم، جزم بأن تكليفهم التزام مذهب معين قريب من المستحيل (مختصر الفوائد المكية، دار البشائر الإسلامية، ص.٤٨)

issues, making it nearly impossible for him to seek out the easiest opinions from amongst the available views of mujtahid scholars and follow his desires.

- After the codification of the madhhabs in approximately the fourth century of Hijrah, it became necessary for a common Muslim to restrict himself to a single madhhab which he believes to be more correct in relation to the other madhhabs
- The reasons for this is that:
  - Firstly, each madhhab was comprehensive and complete, dealing with all the subsidiaries of Islāmic law, so unlike the early period, there was no need to refer to multiple mujtahids or madhhabs
  - Secondly, if given the option to select from the different madhhabs in single issues, the common Muslim would be freed of religious obligation (*taklīf*) and will be free to base his decisions on his whims and desires, by seeking out the easiest opinion from each school.
  - Thirdly, if a layperson follows multiple madhhabs in different rulings, the consequence will be a hotchpotch of legal rulings, many of which are based on conflicting juristic principles, resulting in a methodological contradiction in the outcome, even if not obviously apparent
  - Fourthly, a muqallid's reasoning is limited to investigating which madhhab or mujtahid he feels is superior, and he does not have the right or ability to adjudicate between them on individual issues; thus, if he were to choose from different madhhabs without necessity, it would be based on following desires, even if the muqallid does not realise it or believe so
  - Fifthly, given this option, a muqallid may be led to select opinions outside of the established madhhabs that are shadhdh
  - Sixthly, a muqallid may not be able to observe the conditions of the different madhhabs he is following in a single case, resulting in talfīq
- Major early scholars across all madhhabs before the sixth century of Hijrah have corroborated each of these points, with Qādī 'Iyād and al-Ghazālī having quoted consensus on the obligation of adhering to a single madhhab
- The opinion of some later scholars in contravention to this, when the situation has remained the same since the consensus of the early scholars, is rejected
- Since there is <u>no need</u> to follow multiple madhhabs in this period, and there is a potential for <u>major repercussions</u> – prohibited by consensus – if it is permitted, it behooves <u>all</u> scholars to give the verdict of the obligation of restricting one's taqlīd to a single madhhab, on the basis of prudence and practicality, and closing the avenues to unwanted ends
- When some early scholars spoke of a layperson "having choice" (which was stated even by some of those scholars who obligated restricted taqlīd) or "having no madhhab", they refer to the times and scenarios where these are applicable, such as:
  - If a muqallid has not yet selected a madhhab, or is in such a position that he does not have full access to any single madhhab, he may take fatwa from a scholar of any madhhab

- A muqallid of a particular madhhab in some situations has the choice of accepting different fatwa positions within his school
- The layperson in the era before the codification of madhhabs had no madhhab for the reasons outlined earlier

سبحنك اللهم وبحمدك، أشهد أن لا إله إلا أنت، أستغفرك وأتوب إليك

Appendix

'Allāmah Anwar Shāh Kashmīrī (1292 – 1352 H) said in *Fayd al-Bārī*:

"It has not escaped you that Ibn Nujaym in *Qadā' al-Fawā'it* and Ibn 'Ābidin in the introduction to *Radd al-Muhtār* gave allowance to a dangerous slip, since they allowed an uneducated person who does not know the madhhab of anyone to ask regarding his five Salāhs from whichever scholar from the scholars of the four madhhabs he wishes, and act on whatever he wishes from their fatwas.

"I say:

"This is rejected (*bātil*), because its consequence is that the uneducated person has no madhhab. Analogy with the matter of *iqtidā'* (following an imām in Salāh) is invalid, as there is no alternative to following in *iqtidā'*, as distinguished from acting on the madhhabs, because it is possible for him to restrict himself to a madhhab and follow it in [all] its rulings. As for practising the madhhab of al-Shāfi'ī (Allāh have mercy on him) in one Salāh and the madhhab of the Hanafīs in another Salāh, this is an improper way, and leads to contradiction, and has no precedent in the religion.

"Its explanation is that the rulings of one madhhab are matching with each other. I mean that there is a sequence and connection between them in the mind of the mujtahid. Thus, if these rulings are mixed-up, so at one time one acts on this and at another time on this, it will lead to contradiction, even if it does not appear to the apparent mind, because they may be built on different principles which contradict one another. So if he acts on all those rulings, he will be entangled in a contradiction without realising it, because even if those rulings are not self-contradictory, the principles on which those rulings are based are contradictory, so the contradiction is not visible between those rulings to the apparent mind, although it is verifiable with deeper thought." (*Fayd al-Bārī*, 1:459[55]; also quoted by Shaykh 'Abd al-Fattāh Abū Ghuddah in *Tarājim Sittah min Fuqahā' al-'Ālam al-Islāmī*, Maktab al-Matbū'āt al-Islāmiyyah, p. 73)

[55] ثم لا يذهب عليك أن ابن نُجَيم في باب قضاء الفوائت، وابنَ عابدين في مقدمة «رد المحتار» وسَّعًا سهوًا مُضِرًا، حيث وسَّها للأُمِّيِّ الذي لا يعلم مذهبَ أحدٍ أن يستفتيَ في صلواته الخمسِ أيَّ عالم من علماء المذاهب الأربعة شاء، ويعمل بما شاء من فتاواهم.

أقول: وهذا باطل، فإنَّ حاصله: أن الأُمِّيّ ليس له مذهب والقياس على مسألة الاقتداء فاسد، فإن الاقتداء لا مناص فيه عن المتابعة، بخلاف العمل بالمذاهب فإن له أن يتقيد بمذهب ويتابعه في مسائله. أما العمل بمذهب الشافعي رحمه الله تعالى في صلاة، وبمذهب الحنفية في صلاة أخرى، فمسلكٌ غيرُ مستقيم، والتزام للتناقض، ولا نظير له في الدِّين.

وتحقيقه: أنَّ المسائلَ من مذهب واحدٍ تكون مُتَّسِقَة، أعني به أنه تكون بينها سلسلة وارتباط في ذهن المجتهد، فإذا خلط في هذه المسائل، فيعمل تارةً بهذا وأخرى بهذا، يلزم التناقض، وإن لم يَبْدُ في بادىء الرأي، لأنها ربما تبنى على أصول مختلفة يخالف أحدهما الآخر، فإذا عمل بتلك المسائل كلها ابتلي بالتناقض من حيث لا يدريه، فإن تلك المسائل وإن لم تكن متناقضة إلا أن الأصول التي تتفرع عليها تلك المسائل تكون متناقضة، فلا يلوح التناقض بين تلك المسائل في بادىء الرأي مع أنه متحقق بعد الإمعان (فيض الباري، دار الكتب العلمية، ج.١ ص.٤٥٩)